

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

RICHARD HATCH,

Plaintiff,

v.

**2:07 CV 104
(Maxwell)**

**DOMINIC A. GUTIERREZ, WAYNE
PHILLIPS, LEWIS BRESOACH,
VERONICA FERNANDEZ, DANIEL
J. HICKEY AND RENEE CROGAN,**

Defendants.

ORDER

It will be recalled that on December 18, 2007, *pro se* Plaintiff Richard Hatch, an inmate at FCI Morgantown in Morgantown, West Virginia, filed a civil rights complaint against the above-named Defendants. In his complaint, the Plaintiff seeks declaratory, injunctive, compensatory and punitive relief, for what he alleges was a deliberate indifference by the Defendants to his serious medical needs.

It will further be recalled that the case was referred to United States Magistrate Judge John S. Kaull in accordance with Rule 83.01 of the Local Rules of Prisoner Litigation Procedure and 28 U.S.C. § 1915(e).

By Order entered February 6, 2008, Magistrate Judge Kaull found that summary dismissal of the above-styled civil action was not appropriate and provided the Defendants with sixty days in which to file an Answer to the Plaintiff's Complaint. The Defendants' Response To Order To Answer And Motion To Dismiss Or In The Alternative Motion For Summary Judgment were filed on June 13, 2008. The Plaintiff's Response To Defendants' Motion To Dismiss Or In The Alternative Motion For Summary Judgment was filed on August 4, 2008. It should be noted that, in his Response, the Plaintiff requested dismissal without prejudice of his claims for medical treatment for complaint of blood in stool; complaint of blood in ejaculate; and complaint

if shin lesions. Additionally, the Plaintiff requested dismissal without prejudice of Defendants Renee Crogan; Dominic A. Gutierrez; Wayne Phillips; and Daniel J. Hickey. The Reply Of Defendants To Petitioner's Opposition To Respondent's Motion To Dismiss Or In The Alternative Motion For Summary Judgment was filed on August 15, 2008. On August 26, 2008, the Plaintiff filed an unauthorized Response To Reply Of Defendants To Plaintiff's Opposition To Defendants' Motion To Dismiss Or In The Alternative Motion For Summary Judgment. Finally, on October 30, 2008, the Plaintiff filed a Declaration in support of his claims.

On November 10, 2008, Magistrate Judge Kaull issued an Opinion/Report And Recommendation wherein he recommended that the Plaintiff's request to dismiss certain of his claims and certain of the Defendants be granted and that said claims and Defendants be dismissed without prejudice; that the Defendants' Motion To Dismiss Or In The Alternative Motion For Summary Judgment be granted to the extent that it seeks judgment for Defendants Veronica Fernandez and Lewis Brescoach and that Defendants Fernandez and Brescoach be dismissed with prejudice; and that the above-styled civil action be stricken from the active docket of the Court.

In his Opinion/Report And Recommendation, Magistrate Judge Kaull provided the parties with ten (10) days from the date they were served with copies of said Opinion/Report and Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Opinion/Report And Recommendation.

The Plaintiff's Objections To Opinion/Report And Recommendation were filed on November 24, 2008.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo*

review of those portions of the Magistrate Judge's findings to which objection is made. The Court is not, however, required to review, under a *de novo* or any other standard, the factual or legal conclusions of the Magistrate Judge as to those portions of the findings or recommendation to which no objections are made. Thomas v. Arn, 474 U.S. 140, 150 (1985).

As previously noted, on November 24, 2008, the Plaintiff filed his Objections To Report And Recommendation. The Court has conducted a *de novo* review only as to the portions of the Opinion/Report and Recommendation to which the Plaintiff objected. The remaining portions of the Opinion/Report And Recommendation to which the Plaintiff has not objected have been reviewed for clear error.

The Court finds that the issues raised by the Plaintiff in his Objections To Report And Recommendation were thoroughly considered by Magistrate Judge Kaull in said Opinion/Report And Recommendation. The Court is of the opinion that Magistrate Judge Kaull's Opinion/Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled action. Accordingly, it is

ORDERED that the Opinion/Report And Recommendation entered by United States Magistrate Judge John S. Kaull on November 10, 2008 (Docket No. 74), be, and the same is hereby, **ACCEPTED** in whole, and the Court hereby incorporates the findings of fact and conclusions of law made by Magistrate Judge Kaull in said Opinion/Report And Recommendation. It is further

ORDERED that the Plaintiff's request, as set forth in his Response To Defendants' Motion To Dismiss Or In The Alternative Motion For Summary Judgment

(Docket No. 63), that certain of his claims be dismissed without prejudice, be, and the same is hereby, **GRANTED**. Accordingly, it is further

ORDERED that the following claims by the Plaintiff be, and the same are hereby, **DISMISSED without prejudice**:

1. Medical treatment for complaint of blood in stool;
2. Medical treatment for complaint of blood in ejaculate; and
3. Medical treatment for complaint of shin lesions.

It is further

ORDERED that the Plaintiff's request, as set forth in his Response To Defendants' Motion To Dismiss Or In The Alternative Motion For Summary Judgment (Docket No. 63), that certain of the named Defendants be dismissed without prejudice, be, and the same is hereby, **GRANTED**. Accordingly, it is further

ORDERED that the following named Defendants be, and the same are hereby, **DISMISSED without prejudice**:

1. Renee Crogan;
2. Dominic A. Gutierrez;
3. Wayne Phillips; and
4. Daniel J. Hickey.

It is further

ORDERED that the Defendants' Motion To Dismiss Or For Summary Judgment (Docket No. 46) be and the same is hereby, **GRANTED** to the extent that it seeks summary judgment for Defendants Veronica Fernandez and Lewis Brescoach. It is further

ORDERED that the Plaintiff's Complaint (Docket No. 1) be, and the same is hereby, **DENIED and DISMISSED with prejudice**. It is further

ORDERED that the Clerk of Court shall enter judgment for Defendants Veronica Fernandez and Lewis Brescoach. It is further

ORDERED that, should the Plaintiff desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

ENTER: February 11, 2009

/S/ Robert E. Maxwell
United States District Judge